IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 269 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ROHIT MILLS LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 269 of 1987
MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 04/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue as well as the applicant-assessee, the following questions have been referred to this court for its opinion by the Income Tax Appellate Tribunal Ahmedabad Bench 'A' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') :

At the Instance of the Revenue

1. Whether, in law and on facts, reimbursement of medical expenses is required to be excluded while computing disallowance under section 40(c) of the Income-tax Act, 1961?

2. Whether, in law and on facts, the contribution to an export promotion fund of the Indian Cotton Mills Federation is exigible to weighted deduction under section 35B of the I.T. Act, 1961?

3. Whether, in law and on facts, while considering the sale consideration of shares of Rajesh Textile Mills Ltd. the fall in the value of share of Sayaji Mills Ltd., has to be taken into account?

4. Whether, in law and on facts, premium paid for personal accident insurance policies is required to be excluded while computing disallowance under section 40(c) of the Income-tax Act, 1961?

At the Instance of the Assessee

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the commission paid by the appellant to the Directors of the company should be included in the remuneration for the purposes of determining the disallowance u/s 40(c) of the Act?"

2. Learned advocate Shri M.J. Shah has appeared for the applicant-assessee whereas Sr. Central Government Standing Counsel Shri M.R. Bhatt has appeared for the revenue.

3. So far as the first question, which has been

referred to this court at the instance of the revenue is concerned, it pertains to disallowance under the provisions of sec. 40(c) of the Act where the medical expenditure was incurred by the assessee company for its employees. Upon hearing the learned advocates and looking to the law laid down by this court in the case of Ambica Mills Ltd. v. CIT, 235 ITR 264, in our opinion, the said question deserves to be answered in the negative because the expenditure incurred is not to be excluded while computing the disallowance u/s 40(c) of the Act. We, therefore, answer the question in the negative, i.e., against the assessee and in favour of the revenue.

4. So far as the second question is concerned, it pertains to contribution to an export promotion fund of the Indian Cotton Mills Federation. The question is whether such an expenditure is exigible to weighted deduction u/s 35B of the Act.

5. We have heard the learned advocates and looking to the law laid down by this court in the case of Wintex Ltd. v. CIT, 104 CTR 232, we answer this question in the negative as such an expenditure is not exigible to weighted deduction. We, therefore, answer the question against the assessee and in favour of the revenue.

6. So far as the third question is concerned, upon hearing the learned advocates and looking to the law laid down by this court in the case of CIT v. Suhas Vadilal, 239 ITR 362, we are of the view that the question should be decided against the revenue and in favour of the assessee because, looking to the law laid down by this court, the depreciation in the value of shares of Rajesh Textile Mills will have to be considered while valuing the shares of Sayaji Mills. We, therefore, answer the question in the affirmative i.e. against the revenue and in favour of the assessee.

7. So far as the 4th question, which has been referred to this court at the instance of the revenue is concerned, it pertains to premium paid by the assessee company for personal accident insurance policy of the Director. Looking to the peculiar facts of the case and looking to the judgment delivered by this court in the case of CIT v. Cama Motors Pvt. Ltd. 234 ITR 699, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue.

8. So far as the question which has been referred to this court at the instance of the assessee is concerned, looking to the law laid down by this court in the case of

assessee itself for the earlier year reported in 129 ITR 228, we answer the question in the affirmative, i.e., against the assessee and in favour of the revenue.

In view of the opinion rendered hereinabove, the reference is disposed of with no order as to costs.

(A.R. Dave, J.)

(K.M. Mehta, J.)

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